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Nos. 75-62, 75-66, 75-278

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

RUSSELL L. RUNYON, *et al.*,
Petitioners,

v.

MICHAEL C. McCRARY, etc., *et al.*,
Respondents.

FAIRFAX-BREWSTER SCHOOL, INC.,
Petitioner,

v.

COLIN M. GONZALES, etc., *et al.*,
Respondents.

SOUTHERN INDEPENDENT SCHOOL ASSOCIATION,
Petitioners,

v.

MICHAEL C. McCRARY, etc., *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals, sitting *en banc*, and its order amending the opinion are reported at 515

[1] This brief is in response to three petitions for certiorari seeking review of a single opinion by the court of appeals entered in five consolidated cases. Respondents herein have cross-petitioned for a writ of certiorari (*Michael C. McCrary, etc., et al. v. Russell L. Runyon, et al.*, No. 75-306, October Term, 1975).

F.2d 1082. The memorandum opinion and order of the district court which issued July 27, 1973, is reported at 363 F. Supp. 1200.

JURISDICTION

The judgments of the court of appeals in the consolidated cases were entered on April 15, 1975. Petitions for rehearing were denied by order of the court of appeals filed on May 29, 1975. The petitions for a writ of certiorari were filed on July 10, July 11, and August 22, 1975, respectively. The Clerk of the Court by letter to respondents' counsel dated August 1, 1975, extended the time for filing this brief in opposition to and including 30 days after the third petition for certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 42 U.S.C. Sec. 1981 prohibits private schools from denying admission to qualified black students on the basis of their race.

STATUTE INVOLVED

42 U.S.C. Sec. 1981 provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and extractions of every kind, and to no other.

STATEMENT

In early May 1969, the parents of Colin Gonzales, a black child, contacted Fairfax-Brewster School, a private school located in Fairfax County, Virginia, about enrolling Colin in the school's summer day camp program, and continuing in the first grade in the fall. The Gonzales' had learned of the school through an advertisement in the Yellow Pages of the telephone directory, through a mass mailing from the school addressed to "Resident" and from a friend whose son attended the summer camp. Thereafter, the Gonzales' visited the school with Colin, and completed an application form for his admission. They also furnished, as required, a medical certificate and application fee. On May 16, 1969, the medical certificate and fee were returned to the Gonzales' accompanied by a form letter stating that the school was "unable to accommodate the application." No further explanation was given. Mr. Gonzales called the school and spoke to someone identified as Captain Stuart Reiss, Chairman of the Board. In response to Mr. Gonzales' inquiry as to why his son's application was rejected, he was told that the school was not integrated.

Subsequent to his son's rejection by Fairfax-Brewster School, Mr. Gonzales telephoned Bobbe's Private School. This school, which is located in Arlington County, Virginia, advertises in the Yellow Pages, and also solicits students by direct mail advertising. In response to his

inquiry about enrolling his son, Mr. Gonzales was told that only members of the Caucasian race were accepted.

In August 1972, the mother of Michael McCrary, a black child, called Bobbe's School about enrolling him in the nursery school program. She asked whether the school was integrated and accepted blacks, and was told it did not.

The district court concluded that Colin Gonzales and Michael McCrary were excluded from the schools and day camp operated by the defendants because they are black, and that the rights of the two children and their parents under 42 U.S.C. Sec. 1981, were thereby violated. The district court enjoined the defendants from continuing to discriminate concerning the admission of students on the basis of race. The court also awarded compensatory damages for the embarrassment, humiliation and mental anguish suffered by the plaintiffs, as well as attorneys' fees. Fairfax-Brewster School was ordered to pay $2,000 damages to Colin Gonzales and $1,000 attorneys' fees. Bobbe's School was ordered to pay $1,000 damages to Michael McCrary, $2,000 to his parents, and $500 to Colin Gonzales, as well as $1,000 attorneys' fees. The court denied damages to Mr. and Mrs. Gonzales on the ground that their suit was filed three and one-half years after the discrimination against them occurred and that their claims for damages against the schools were therefore barred by Virginia's two-year statute of limitations. Sec. 8-24, Code of Virginia (1950).

The court of appeals, sitting *en banc* and with three judges dissenting, found "ample evidence" in the record to support the district court's factual findings that Colin Gonzales and Michael McCrary were excluded from the

two schools on grounds of race. The court of appeals also agreed with the district court's conclusion that plaintiffs' rights under 42 U.S.C. Sec. 1981 were thereby violated. The court of appeals affirmed the district court's award of damages to the individual plaintiffs, as well as the denial of damages to Mr. and Mrs. Gonzales on the ground that their claims were barred by Virginia's two-year statute of limitations. Finally, the court of appeals, with three judges dissenting, reversed the district court's award of attorneys' fees to plaintiffs. The three judges dissenting on this issue would have affirmed the award of fees to plaintiffs under the "bad faith" exception to the general rule that such fees are not awarded to a prevailing litigant.

ARGUMENT

Respondents agree with the court of appeals' conclusion that 42 U.S.C. Sec. 1981 prohibits private schools from denying admission to qualified black students on the basis of their race. The opinion of the court fully explicates the basis for its decision, and respondents concur in the court's reasoning. Accordingly, respondents believe that the question, as stated above (p. 2), which is principally presented by these three petitions was correctly answered in the affirmative by the court of appeals and its decision in this regard should be allowed to stand.

CONCLUSION

The petitions for a writ of certiorari should be denied. Respectfully submitted.

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